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1952

File No. D.P. Trusts /52

Legal Dept.

A. **BRANCH.** P.27(E)

Subject:— Opinions under the Bombay Public Trusts Act 1950

File No. D. Public Trusts /52

Gen. 194

490-A

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File No. O.P. Trusts/52

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C O N T E N T S.

Legal Department File No. C.Public Trusts/52.

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9.	O.No. 13209/11-8-52.	Re: Acceptance of donation by Baroda Govt. for the purpose of awarding a prize to a student of particular caste, from a certain school. Proposed that the command nature of the fund should be ~~xkaxx~~ alone away with before the same is transferred to the Municipality. 23-24.
10.	O.No. 15336/18-9-52.	Re: Administration of Devanthans in Sawantwadi State. 25-26.
11.	O.No. 16325/4-10-52.	Re: Addl. Secy's Opinion No. 7516 dt. 12-5-52 and R.L.A's No. 1633 dt. 1-2-52. R minderation of 27-28.
12.	O.No. 16375/6-10-52.	Question regarding the management of the Radha Krishna Temple at Pavetha Taluka Zagadia. 29-28.
13.	O.No. 17226/17-10-52.	Whether the Charity has power to issue in general under fixing a date other than 31st day of March under Sec 33(1) 2) Whether the process under this Sec. can be delegated by the Regional & Asstt. Charity Commissioners. 33-31

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C O N T E N T S.

Sr. No.	Compilation No. Legal Department File No.	Subject.	Pages.
14.	O. No.20008/28-11-52.	Re: School constructed and of the donation by certain person which bears a tablet in his mother's name. Necessity of courts directions under sec 55 for its cy-press application.	39-42.
15.	O.No.18594/5-11-52.	Re: Acceptance of donation by Baroda Govt. for the purpose of a school. Whether it would be legally feasible to close down the school in view of the donation.	43-44.
16.	O.No.20804/12-12-52.	Re: Acceptance of the donation by Sawantwadi State Govt. for the purpose of the school. Question regarding the utilisation of the donation fund.	45-50.

DY
.317

The attention of the Revenue Department is invited to the observation made by the Charity Commissioner on 6-10-50 at page 58 or R.D. file No. 3800/49-I with regard to the question of the continuance of the management of the temples in question with Government on the coming into force of the Bombay Public Trusts Act, 1950. The Charity Commissioner has observed as under:-

"Under the Bombay Public Trusts Act, 1950 the management and administration will continue to vest in the trustees and if there is any scheme and the persons are appointed for management and administration under it, the Charity Commissioner will not take over the management of such religious trusts. Only the Act imposes certain obligations on such religious trusts and gives the Charity Commissioner power to move the Court in case of mal-administration or mismanagement etc. The new Act when applied will, therefore, not make a difference in the present system of management of the temples in question."

The temples at Dwarka and at Beyt though they are under the management of Government are public trusts within the meaning of the Bombay Public Trusts Act, 1950 and it is presumed that the respective temples committees have taken steps to register the trusts under section 18 of the Act.

The administration of the temples in question is governed according to the scheme laid down in the rules framed by the former Baroda Government. These Rules pertain to the administration of specific institutions. They do not correspond to any of the enactments extended to the areas of the former Baroda State on the merger of the State. Hence the Rules read with para 4 of the Administration of Baroda State order, 1949 may be deemed as continued in force. The powers conferred on Government

Government by the said rules can be exercised by the Government of Bombay. The fact that the Bombay Public Trusts Act, 1950 has been brought into force does not create any bar to the continuance of the management of the temples in question with the Government. As the temples in question are public trusts the management would also be subject to the provisions of the Bombay Public Trusts Act, 1950. There is no objection to continuing the management of the temples with Government till the object of ensuring effective management is achieved. If, however, Government decides to divest itself of the management it is desirable to have proper scheme for management of the temples and temple properties settled by the competent court. Under section 50 of the Bombay Public Trusts Act, it is open for the Charity Commissioner to institute a suit for the purpose.

~~[illegible]~~

The R.L.A. would like to add that looking to the importance of the temples, it would be advisable to continute management by Governmentas at present.

Sd. P.N.Lad.
2/5

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6983, dated the 3rd May 1952.

VGP. 18-6-56.

Jacob Season
European General
Hospital.

Notice of the R.L.A.

The view taken by the District Government Pleader is correct. There is no appeal against the District Judge's Order on the application under section 7 (vide sec. 12). Under section 50 of the Bombay Public Trusts Act, 1951, it is open to the Charity Commissioner to give a notice in writing to the trustees to apply to the Court for directions and ~~xxxxxxx~~ it would be competent to Government to file the application on receipt of such a notice from the Charity Commissioner. It will not however be legally feasible for Government to keep the reserved beds open to the public until the Court's directions are received (cf. R.L.A's opinion No. 17376 dt. 7-12-50).

Sd. P.M.Lad.
1/5

e.e.

Remembrancer of Legal Affairs.

U.R. to L.S.G.' P.H.D. No.6943, dated the 2nd May 1952.

VGP. 18-6-56.

The question raised in this case appears to be of a general nature and it may not be easy to file suits in each and every case in order to enable Government to divest itself of the management of the temples as suggested by the Charity Commissioner in his note at pp.49-50 ante. In order to enable the R.L.A. to express a definite opinion therefore the Revenue Department is requested to state whether there are in existence in the merged Kolhapur and Baroda States Charitable Institutions managed by Government and if so how many they are. It also appears that even before the merger of the States there were in existence in this State several such Charitable Institutions which were managed by the State (e.g. the Jejuri Temple in the Poona District). The Revenue Department is requested to forward copies of the Constitutions of some of these.

Sd. P.M. Lad.

e.o.

Additional Secretary to Government.

U.R. to R.D. No. 2633, dated the 18th Feb. 1958.

VGP. 18-6-56.

It will be seen from the Additional Secretary's opinion at page 59 ante that it was presumed that the Sawantwadi Devasthan Act of 1932 ceased to have force on the merger of Sawantwadi State with Bombay; though only the essential features of that Act survived. Now that the Bombay Public Trusts Act, 1950 has come into force the administration of public trusts is required to be carried out under the control of the Charity Commissioner, in the manner prescribed in the Act. For the State Government to appoint the Mamlatdars and Mahalkaris concerned as Devasthan Superintendents as contemplated by sections 3 and 4 of the Sawantwadi Devasthans Act will therefore be inconsistent with the provisions of the Bombay Public Trusts Act, 1950. It would not therefore be legally feasible to appoints the those officers as proposed.

2. The next question raised is whether there is any objection to moving the Charity Commissioner to institute suits under section 50 of the Bombay Public Trusts Act, 1950, with a view to Government divesting itself of the trusteeship of the Devasthans, and settling schemes for their administration. This course is no doubt feasible under the law, but if the number of such institutions is large it would involve lot of time and will not be an easy task. The object of divesting the Government of its responsibilities of the trusts can also be achieved by undertaking suitable legislation. The Revenue Department may consider the matter from this point of view.

Sd. J.R. Dhurandhar.
17/7

o.c.

Additional Secretary to Government.

U.R. to R.D. No.11945, dated the 19th July 1952.

VGP. 18-6-56.

Adarsh Gram Fund
Bombay Public
Trusts Act, 1950
S. 50.

It appears that the trust in question will be held to be a public charitable trust (see All India Spinners Association Vs. The Commission of Income Tax, 47 Bom. L.R. 853); and the composition of the Board of Trustees cannot be altered as proposed. It is also not clear how the corpus of the Fund could be divided between the two Government when the Fund is a trust and is not Government property. Whatever may be the arrangement between the Government of Bombay and Rajasthan Government regarding the division of assets and liabilities of the former Sirohi State, the Trustees of the Adarsh Gram Fund will be under an obligation to carry out the provisions of the Trust Deed. It may however be possible for the Charity Commissioner or any two persons interested in the Trust with the consent of the Charity Commissioner under section 50 of the Bombay Public Trusts Act, 1950 to file a suit and apply to the Court to have a scheme framed incorporating therein the arrangement as far as may be practicable.

Sd. P.M.Lad.
9/5

O.O.

Remembrancer of Legal Affairs.

U.R. to P.& R.D. No.7029, dated the
10th May 1952.

MMR.VGP. 18-6-56.

A suit to set aside alienation of trust property alleged to have been wrongly made by the Trustees and for recovery of the property from the alienee is not suit falling under section 50 of the Bombay Public Trusts Act, 1950. (Kasi Hasan v. Sagun (1900) 24 Bom. 170; Laxmandas v. Ganpatrao (1894) 8 Bom. 365; Vishwanath v. Ramchat (1891) 15 Bom. 148; Chelabhai v. Uderam (1911) 36 Bom. 29). Such a suit has to be filed ~~it~~ in the ordinary manner and as temple is under Government can file it without reference to the Charity Commissioner.

Sd. P.H.Lad.
19/6.

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No.10269, dated the 29th June 1952.

VGP. 18-6-56.

 Office of the R.L.A.

The R.L.A. is requested todvise on the questions raised in paragraph 3 of the E.D. note. It appears that the Palanpur State has created several funds for the grant of scholarships or prizes to students in the various schools. The securities comprising the funds stood in the name of the Wazir. The question discussed is how the funds should be utilised now.

2. The first question is about the Victory Scholarship Fund mentioned at S.No.18 in the statement at page 16 of the Correspondence section. This fund was created out of the donations collected by the people to commemorate the victory of the allies. The income is utilised for awarding a scholarship to a student from Palanpur State studying in a technical line. The Director of Education proposes that the fund may be utilised for the purpose for which it was earmarked. The R.L.A. is requested to advise whether in view of the provisions of the Constitution the scholarship can now be reserved for a student from Palanpur State. The article of the Constitution to be considered in this connection is article 15(1). That article provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. This article does not prohibit discrimination based on the ground of residence. There would be no objection therefore, to utilising the income [illegible] of the fund for awarding a scholarship to a student ordinarily resident in the merged area of Palanpur irrespective of the fact whether he is born in that area or not. (Cf. R.L.A.'s opinion No. 11678 dated 8-7-1952, copy attached).

3. The next question is whether the Silver Jubilee Somani

Somani Chandisa, English School Fund can be utilised for a purpose other than that for which it was created. This fund was donated on the occasion of the Silver Jubilee of His Highness for the purpose of utilising the income towards the maintenance of an English School at Chandisar. The school had been closed with effect from 7-3-1949. The Education Department considers that as no trust deed has been executed in connection with this donation there is no objection to utilising the fund for a purpose other than that for which it was created. If the purpose of the fund has failed, the income thereof can be utilised for apurpose similar to the original one. But for this purpose the permission of the Court will have to be obtained. The object cannot be achieved by merely issuing executive orders. The matter may, therefore by brought to the notice of the Charity Commissioner forsection under section 55 of the Bombay Public Trusts Act, 1950.

4. The last question is about the utilisation of the funds mentioned at S.Nos. 20,29,30, 31 and 33 of the statement at page 15 of the Correspondence section. In all these cases the scholarships or prizes are to be awarded tostudents of a particular community. The Education Department considers that it is within the competence of Government to award the scholarships or prizes to students without reserving the same for a particular community. The Education Department view is not correct. Though it may be against article 15 of the Constitution for Government to manage the funds, it is necessary to obtain the directions of the Court as contemplated by sections 55 and 56 of the Bombay Public Trusts Act. 1950. Under those provisions it may be possible for the Court to give directions and relieve Government of the obligations if it is of the opinion that

that having regard to the provisions of the Constitution it is inexpedient to carryx out the same. (Cf. H.L.A's opinion No. 5473, dated the 12-1-1952 in the case of the Andheri College).

Sd. P.H.Lad.
4/8

oo.

Remembrancer of Legal Affairs.

U.H. to H.D. No. 12973, dated the 6th August, 1952.

VGP. 18-8-56.

Office of the R.L.A.

It would be seen from the Baroda Council Order dated the 12th January 1939 that the donation of Rs. 3699-6-11 was accepted by the Baroda Government with a view to opening English classes V to VIII to be attached to the Songadh Primary Boy's School If it is found inexpedient to run the said classes it would be possible to utilise the income derived from the said fund for a purpose similar to the original one. But in order to so divert the use the permission of the Court will have to be obtained. If an when it is considered necessary to close Standards VII and VIII the matter may be brought to the notice of the Charity Commissioner for action under section 55 of the Bombay Public Trusts Act, 1950 (vide para 3 of R.L.A's opinion No.12973 dated the 6th August 1952).

Sd. P.M.Lad.
9/8/52

O.O.

Remembrancer of Legal Affairs.

U.R. to E7D. No. 13208 dated the 11th August 1952.

VDP. 18-8-52.

 Office of the R.L.A.

The acceptance of the donation by the Baroda Govt. amounts to the creation of a trust the obligation thereunder has now developed upon the Government of Bombay. It is true that in view of the provisions of the Constitutions it has become impossible for Government to carry out the obligations attached to the trust. The same difficulty will arise in the case of the administration of the Trust by the Municipality. In order to get over the difficulty the only course that can be resorted to will be for Government after obtaining the consent of the Charity Commissioner to apply to the Court for directions under sections 55 and 56 of the Bombay Public Trusts Act, 1950. (Vide R.L.A's Opinion 5475, dated 12th April 1952.) However as the amount of the fund is very small (Rs.56-10-6) it is for the Education Department to decide whether Government itself should approach the Court or whether it should be left to somebody else to raise the point.

Sd; R.V.Lad.
9/8

C.C.
Remembrancer of Legal Affairs.

U.H. to E.D. No.13209, dated the 11th August 1952.

VGP. 18-6-56.

As Government is in the position of a trustee in respect of the temples in question, there would be no objection to asking the Collector of Ratnagiri who is an executive officer of Government to look to the day to day administration of the temples. The course suggested at 'A' in the Revenue Department office note at page 108 ante would be legally feasible.

Sd. P.N.Lad.
17/9

C.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15536/A dated the 18th Sept. 1952.

VGP. 18.6-56

Though Government had spent a sum of Rs. 33,196/- in the erection of the building, the fact remains that the people themselves had collected a substantual sum of Rs. 24,000/- which had been accepted by the Idar Darbar on conditions one of which was that the State itself would contribute an equal amount towards the construction. no new point has been raised by Director of Education The view expressed in the Education Department note is correct and the opinions already recorded do not need any modification.

Sd. P.M.Lad.
3/10

O.S.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 16325/A dated the 4th October 1952.

VGP. 18-6-56.

Submitted with reference to R.D. note at page 15 ante The Collector of Broach has proposed that the management of the Radha Krishna Temple at Panetha, Taluka Zagadia, should be transferred to the Village Committee, which has expressed its willingness to accept the same. The management of this Devasthan had been taken over by the Rajpipla State in accordance with Huzur Order No. 186, dated the 22-7-1915. The R.D. proposes to accept the Collector's proposal and to transfer the management to the Village Committee on the conditions mentioned at page 9 ante. The R.D. accordingly proposes to inform the Collector that he should take the necessary action to file a suit under section 50 of the Bombay Public Trusts Act; 1950, after obtaining the consent of the Charity Commissioner as required by section 51, for the reliefs specified in clauses(c) and (g) of section 50 namely the appointment of a new Trustee, and the settlement of a scheme. The papers are shown to the R.L.A. before the Collector is informed accordingly.

VUP. 18-8-52.

Seen and returned.

The action proposed by the Revenue Department in asking the Collector of Broach to take steps to institute a suit under section 50 of the Bombay Public Trusts Act, 1950, for the reliefs specified after first obtaining the consent of the Charity Commissioner, is in order. In this connection the attention of the Revenue Department is invited to paragraph 2 of the Additional Secretary's Opinion No. 11945 dated the 19th July 1952, where the Additional Secretary had suggested the undertaking of suitable legislation with a view to divesting Government of its responsibilities of the management of public temples.

Sd. J.R.Dhurandhar.
4/10

O.O.

Additional Secretary to Government.

U.R. to R.D. No.16375/A, dated the 6th October 1952.

aVGP. 18-6-56.

L.D.R.I. No. 20994 dt. 8-9-52.

(1) Whether the Charity Commissioner has powerk to issue a general order fixing a date other than 31st day of March under sec. 33(1) of the Bombay Public Trusts Act, 1950; and

(2) Whether the powers under this section can be delegated to the Regional Deputy and Assistant Charity Commissioner.

D.S. (Civil).

Sd. Kxtxkad.
1x/9.

R.L.A. Sxkxtkaxxmay

Sd. P.M.Lad.
1/10.

Sd.

Secy. We may discuss this with C.C.

Sd. P.M.Lad.
8/10.

VOP, 22-6-56.

Legal Department.

This case was discussed with the Charity Commissioner The Charity Commissioner also realises the difficulty pointed out by the Solicitor, and in order to evbiate that difficulty, he proposes to include in the press note a direction that he Trusts concerned should inform the Assistant or Deputy Charity Commissioner the date which they have selected. Also at the time of the inquiry the date adopted by the particular Trust will be ascertained and entered in the books. In these circumstances there should be no objection to permitting the Charity Commissioner to issue a general order fixing the dates which were accepted at the conference, namely, 31st December, 30th June and Samvat Aso Vad 30th (Diwali).

2. In almost all cases these dates should suffice, and delegation for fixing dates other than these does not appear to be immediately necessary. If experience shows that the application for dates other than the four now fixed are frequently made, then the question of delegation may be taken up.

Sd. P.M.Lad.
16/10

S.S.

Secretary to Government.

U.R. to C.C. No.17226A dated the 17th Octob

VGP. 18-6-56.

R.I.No. [illegible] dt. 19-11-52.

Submitted,

2. In R.L.A.'s opinion No. 18394, dated the 5th November 1952 it was pointed out to the E.D. that since the school building of the Mixed School Mahuva was constructed out of the donation by Shri Hormusji Keshavji and bears a tablet in his mother's name the directions of the Court under section 58 of the Bombay Public Trusts Act, 1950 would have to be sought for its cpr cy-press application. The E.D. has not referred the papers to the R.L.A. on the point whether in the procedure pointed out in R.L.A.'s opinion No. 11071 dated the 4th July 1952 should be followed in this case, although there is no condition requiring maintenance of the school as a Govt. institution.

D.S. (Civil).

RLA. Sd. P.M.Lad.
26/11.

VGP. 22-6-53.

The R.D. has combined the two issues of closure of the school and cy-press application of the school building after its closure. The Court's direction under section 55 of the Bombay Public Trusts Act, 1950, would be necessary for cy-press application of the school building itself even after the closure of the school and action as pointed out in R.L.A's opinion No. 11071 dated 4-7-1952 may be taken for the purpose.

Sd. P.M.Lad.
27/11

e.e.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 20008/A dated the 28th November 1952.

VGP. 18-6-56.

 Office of the R.L.A.

There appears no objection to the closure of the School for want of a sufficient number of students to run the School. However as the school buildings was constructed out of a donation by Shri Hormusji Keshavji and bears a tablet in his mother's name the directions of the Court under section 55 of the Bombay Public Trusts Act, 1950 would have to be sought for its cy-pres application.

Sd. P.H.Lad.
4/11

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18394/A, dated the 5th November 1958.

VOP. 18-6-58.

It appears that an offer of a donation of Rs.8,000/- by Shri. A.M. Kasi of Sawantwadi was accepted by the Sawantwadi State subject to the following conditions:-

(1) The present Urdu school will be named after the grand-mother of Shri Kasi namely Jainabi.

(2) Rs.3,000/- would be spent for the building, use of the present Urdu school building being made. This amount will be utilised according to the advice of the State Engineers, though as far as possible the plan given by the Kazisaheb will be adhered to if the amount of Rs.3.000/- be found sufficient for the purpose.

(3) The interest of Rs.5.000/- which amount will be invested into a permanent fund, would be utilised according to the suggestions made by the Kazisaheb.

Those suggestions as stated by him in his letter dated 25th March 1939 were that qualified teachers should be appointed in the said school, the interest of the permanent fund should be utilised for the difference of increased salary to qualified peachersand for the upkeep of the school compound, and for distribution of books to poor students. After the death of Shri A.M.Kasi, his son has paid both the amounts of Rs.3.000/- and Rs 5,000/- to the Sawantwadi Darbar in fulfilment of the promise made. [* The State Engineer prepared an estimate according to which the repairs of the building alone were to cost Rs.7.242/- in view of which Shri A.M.Kasi's son proposed that the question of carrying out repairs to the building should be dropped and the whole amount of donation, that is to say, Rs.8,000/- should be taken up and utilised in awarding scholarships todeserving Muslim students. This suggestion was not accepted by the

VGP. 18-6-56.

* The School was not even erected nor the amount of Rs 5000/- utilised for any purpose before the merger of the State.

Sawantwadi Darbar. Now after the merger Shri A.M.Kazi's son request for return of the amount in case it is found that the fund cannot be utilised for the purpose for which it was donated. Government has written to him that in view of the provisions of the Constitute of India no scholarships can be reserved for students of a particular community and therefore his proposal cannot be accepted and he should suggest alternate proposals for the utilisation of the donation in question. No reply appears to have been so far received by Government. The Education Department appears to be of the view that the trust having been created by acceptance of donations the question will have to be considered whether directions of the Court can be obtained under sections 55 and 56 of the Bombay Public Trusts Act, 1950 for utilising the fund for other purposes. The question raised for the R.L.A's consideration is whether the course suggested by E.D. is legally in order.

2. It is apparent from the letter of Shri A.M.Kazi dated the 25th March 1939 offering the donation and the reply of the Sawantwadi Darbar dated the 1st April 1939 accepting the offer that the donation was conditional, that is to say, both the amounts were intended to be applied for certain specific purposes. The amount of Rs.3,000/- was to be utilised for erecting the Urdu School to be named after his grand mother Jainabi. Even the repairs of the present buildings would cost not less than Rs.7,000/-. If so the erection of buildings would cost much more and consequently, the amount of Rs.3,000/- donated by Shri A.M. Kazi would not be sufficient at to meet the necessary expenses for the erection of the building. The amount of Rs.3,000/- which was being invested into a permanent fund to be utilised for payment of additional remuneration to the teachers of the Urdu school and scholarships to poor students, cannot be utilised by Government in view of the constitutional changes. It would

would, therefore, be clear that the conditions subject to which the donation of Rs.3,000/- and Rs.5,000/- was accepted cannot be fulfilled by -Government. The cy-press principle which H.D. has in view can never be used to defeat the donor's intention. (See Tudor p. 5). Consequently, when Government is unable to satisfy the conditions subject to which the donation was made by Shri. A.M.Kazi the proper course would be to return the donation to Shri A.M.Kazi's son unless he agrees to some alternate proposal which would be acceptable to Government.

Sd. P.N.Lal.
11/12

e.e.

Remembrancer of Legal Affairs.

U.O. to H.D. No. 20904/A dated the 12th December 1952.

VGP. 18-6-56.